IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

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WRIT PETITION NO.5587 of 1995

Between:

Messu Buchaiah S/o. Bakkaiah
r/o. Gopalapuram (Kotha Nakiripeta) Lakshmipuram Panchayat
Musalamadugu (P), Burgampad (M), Khammam Dist.

..... PETITIONER

AND

The Land Acquisition Officer-cum-Revenue Divisional Officer
Palwancha, Khammam Dist.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction directing the Land Acquisition Officer-cum-Revenue Divisional Officer, Palwancha, Khammam Dist. to refer the matter U/s. 18 of the Act in respect of the land in Survey No.67/3, extent of Ac.6-20 gts. Suraram (v), Palwancha (M), Khammam Dist. acquired for the purpose of Addl.Ash Pond for K.T.P.S., Palwancha, Khammam Dist. to the Civil Court for adjudication of rights and for fixation of reasonable market value in respect of land.

Counsel for the Petitioner: MR.N.SUBBA RAO

Counsel for the Respondent: GP FOR LAND ACQUISITION

The Court made the following :

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ORAL ORDER:

This writ petition is filed, seeking a direction to the respondent-Land Acquisition Officer to refer the matter relating to Acs.6-20 gts. of land situated in Survey No.67/3 of Suraram village, Palwancha Mandal, Khammam District, to the Civil Court under Section 18 of the Land Acquisition Act (for short "the Act"), for adjudication of rights and for fixation of reasonable market value.

The petitioner claims to be pattadar of the land in question. The Government of Andhra Pradesh initiated acquisition proceedings under the Act in respect of the said land and other extents of land, for the purpose of construction of Additional Ash Pond for K.T.P.S., Paloncha, and issued draft notification under Section 4(1) of the Act and Draft Declaration under Section 6 of the Act. It is the case of the petitioner that no notice was issued to him, though his name was recorded in the Gazettee Notification issued for the land in question. He stated that even after passing the award by the respondent-Land Acquisition Officer, no notice was served on him. On 17-10-1994 he submitted an application requesting the respondent to refer the matter in respect of the said land to the Civil Court for adjudication of rights and for fixation of reasonable market value, but there is no response from the respondent. Hence, the writ petition.

The respondent filed counter-affidavit. He admitted that the name of the petitioner was recorded in the Gazette notification, as pattadar for the land in question, and the names of the persons shown in Col.No.8 thereof as its occupants. He submitted that the ryots of Suraram village, whose lands are coming under acquisition, have made representation stating that several discrepancies occurred during the survey, and requested to conduct re-survey of the lands. Accordingly, re-survey was conducted and the discrepancies noticed in the earlier survey were rectified and the Assistant

Director of Survey and Land Records, Khammam furnished the scrutinized survey sub-division records. According to the said survey records, no land under the possession and enjoyment of the petitioner was proposed for acquisition. It is submitted that since the land of the petitioner was not acquired, no reply was given to the application made by the petitioner.

Heard the learned counsel for the petitioner and learned Government Pleader for Land Acquisition.

Admittedly, in the Gazette notification issued under Section 6 of the Act, dated 19-4-1993, the name of the petitioner is recorded as pattedar of the land in question. No notice was issued to him before passing the Award by the respondent, enabling him to submit his objections, if any. According to the petitioner, no notice was also issued to him regarding the re-survey of lands and the re-survey was conducted behind his back. Basing on the re-survey, it is stated that no land of the petitioner was acquired.

Be that as it may, It is to be noticed that no amended notification is issued for the acquisition proceedings basing on the re-survey conducted. Therefore, the notification issued earlier is in force. In such view of the matter, it is obligatory upon the respondent to issue notice to the petitioner and to provide him opportunity of hearing, enabling him to submit his objections, if any.

A Division Bench of this Court in **G. Venkata Reddy v. K. Krishna Rao,** held as follows:

> "……. while passing the award the Collector (Land Acquisition Officer) has to enquire into (i) the objections submitted by the persons interested, to the measurements made under Section 8; (ii) the value of the land on the date of notification under Section 4(1); and (iii) the respective interests of the persons claiming the compensation. After such enquiry, he has to make an award under his hand, stating (i) the true area of the land; (ii) the compensation determined by him; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. The power vested in the Collector to enquire into the respective claims of the persons claiming interest, necessarily means that he has the power to enquire into and determine the disputed claims and disputed questions of title as well. It cannot be said that the Land Acquisition Officer has no jurisdiction to go into the disputed claims or disputed questions of title or that, as such a dispute arises, he is under an obligation to make a reference to the Civil Court. It is true that the decision rendered by him, whether on the question of the area of the land, the quantum of compensation, or on the question of apportionment, is not final and he is under an obligation to make a reference to Civil Court with respect to the aforesaid questions if an application in writing is made to him under, and in accordance with Section 18."

Therefore, in view of the above legal position and having regard to the facts

and the circumstances of the case, I deem it appropriate to direct the respondent to refer the case of the petitioner to the Civil Court as per the provisions of the Act, as sought for by him in his application, dated 17-10-1994.

Accordingly, the writ petition is allowed. No costs.

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N.V. RAMANA, J

Date: 23-08-2004

Nsr/Svv

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this the Twenty Third day of August, Two Thousand and Four.

To

1. The Land Acquisition Officer-cum-Revenue Divisional Officer, Palwancha, Khammam District.
2. Two CCs to GP for Land Acquisition, High Court of AP., Hyderabad (OUT)
3. Two CD copies.